



March 28, 2003

---

---

# ENGROSSED

## HOUSE BILL No. 1738

---

DIGEST OF HB 1738 (Updated March 27, 2003 1:33 PM - DI 110)

**Citations Affected:** IC 7.1-1; IC 7.1-2; IC 7.1-3; IC 7.1-4; IC 7.1-5; IC 35-46.

**Synopsis:** Various alcoholic beverage and tobacco matters. Limits the deposit of an alcoholic beverage dealer or retailer permit with the alcohol and tobacco commission to three years. Reduces the fee for a tobacco sales certificate from \$100 to \$50. Increases the supplemental caterer's permit fees and employee permit fees. Establishes a fee of \$10 for a duplicate or reissued permit. Requires tobacco retailers to have certificates to sell tobacco products. Authorizes the alcohol and tobacco commission to issue and enforce certificates. Provides that fees collected shall be deposited in the enforcement and administration fund. Amends provisions concerning the sale and distribution of tobacco products. Provides that the prosecutor for the alcohol and tobacco commission has the powers pertaining to tobacco that the prosecutor has for alcohol offenses. Provides that failure to pay civil penalties for certain violations is a Class B infraction. Provides that a person who sells or distributes tobacco products without a certificate commits a class A infraction. Provides that selling tobacco products to minors at least 6 times within 6 months is a Class B infraction. Repeals prohibition on certain tobacco billboard advertisements. Repeals a provision prohibiting the issuance of a season permit to a person who: (1) owns, manages, or controls a resort hotel; and (2) has violated an alcoholic beverage law. Repeals a provision concerning advertising of tobacco products that is preempted by federal law. Allows the alcohol and tobacco commission to adopt rules for excursion and adjacent landsite permits concerning the sale of alcoholic beverages.

**Effective:** Upon passage; July 1, 2003.

---

---

### Kuzman

(SENATE SPONSORS — MERRITT, ALTING, MRVAN)

---

---

January 21, 2003, read first time and referred to Committee on Public Policy, Ethics and Veterans Affairs.

February 25, 2003, amended, reported — Do Pass.

March 3, 2003, read second time, amended, ordered engrossed.

March 4, 2003, engrossed. Read third time, passed. Yeas 83, nays 11.

SENATE ACTION

March 13, 2003, read first time and referred to Committee on Commerce and Consumer Affairs.

March 27, 2003, amended, reported favorably — Do Pass.

---

---

EH 1738—LS 7636/DI 87+



C  
o  
p  
y

March 28, 2003

First Regular Session 113th General Assembly (2003)

PRINTING CODE. Amendments: Whenever an existing statute (or a section of the Indiana Constitution) is being amended, the text of the existing provision will appear in this style type, additions will appear in **this style type**, and deletions will appear in ~~this style type~~.

Additions: Whenever a new statutory provision is being enacted (or a new constitutional provision adopted), the text of the new provision will appear in **this style type**. Also, the word **NEW** will appear in that style type in the introductory clause of each SECTION that adds a new provision to the Indiana Code or the Indiana Constitution.

Conflict reconciliation: Text in a statute in *this style type* or ~~this style type~~ reconciles conflicts between statutes enacted by the 2002 Regular or Special Session of the General Assembly.

## ENGROSSED HOUSE BILL No. 1738

A BILL FOR AN ACT to amend the Indiana Code concerning  
alcoholic beverages and tobacco.

*Be it enacted by the General Assembly of the State of Indiana:*

1 SECTION 1. IC 7.1-1-1-1 IS AMENDED TO READ AS  
2 FOLLOWS [EFFECTIVE JULY 1, 2003]: Sec. 1. ~~General Purposes:~~  
3 The **following are the** general purposes of this title: ~~are:~~

4 ~~(a)~~ **(1)** To protect the economic welfare, health, peace, and morals  
5 of the people of this state.

6 ~~(b)~~ **(2)** To regulate and limit the manufacture, sale, possession,  
7 and use of alcohol and alcoholic beverages. ~~and,~~

8 ~~(c)~~ **(3)** To regulate the sale, possession, and distribution of  
9 tobacco products.

10 **(4)** To provide for the raising of revenue.

11 SECTION 2. IC 7.1-1-2-2, AS AMENDED BY P.L.213-2001,  
12 SECTION 1, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE  
13 JULY 1, 2003]: Sec. 2. Except as provided in IC 7.1-5-1-3 and  
14 IC 7.1-5-1-6, this title applies to the **following:**

15 **(1)** The commercial manufacturing, bottling, selling, bartering,  
16 importing, transporting, delivering, furnishing, or possessing of  
17 alcohol, alcoholic beverages, industrial alcohol, malt, malt syrup,

EH 1738—LS 7636/DI 87+



malt extract, liquid malt or wort.

**(2) The sale, possession, and distribution of tobacco products.**

SECTION 3. IC 7.1-1-3-8.5 IS ADDED TO THE INDIANA CODE AS A **NEW** SECTION TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2003]: **Sec. 8.5. "Certificate" means a tobacco sales certificate for purposes of IC 7.1-3-18.5.**

SECTION 4. IC 7.1-1-3-47.5 IS ADDED TO THE INDIANA CODE AS A **NEW** SECTION TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2003]: **Sec. 47.5. "Tobacco product" has the meaning set forth in IC 7.1-6-1-3.**

SECTION 5. IC 7.1-2-3-33, AS ADDED BY P.L.177-1999, SECTION 5, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2003]: Sec. 33. The commission is authorized to:

(1) investigate a violation of; and

(2) enforce a penalty for a violation of;

IC 35-46-1-10, IC 35-46-1-10.2, ~~IC 35-46-1-11.3~~, IC 35-46-1-11.5, or IC 35-46-1-11.7.

SECTION 6. IC 7.1-2-2-5 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2003]: Sec. 5. Prosecutor: Powers and Duties. The prosecutor shall have the following powers and duties:

(a) To prosecute before the commission all violations of laws pertaining to alcohol, ~~and~~ alcoholic beverages, **and tobacco, including violations pertaining to tobacco vending machines;**

(b) To prosecute before the commission all violations of the rules and regulations of the commission;

(c) To assist the prosecuting attorneys of the various judicial circuits in the investigation and prosecution of violations of laws pertaining to alcohol, ~~and~~ alcoholic beverages, **and tobacco, including violations pertaining to tobacco vending machines**, and to represent the state in these matters;

(d) To appear before grand juries to assist in their investigations into matters pertaining to alcohol, ~~and~~ alcoholic beverages, **and tobacco, including matters pertaining to tobacco vending machines;**

(e) To establish a seal of his office;

(f) To administer oaths and to do all other acts authorized by law for notaries public; and,

(g) To employ, with the consent of the commission and at salaries fixed by the commission in their budget, the clerical staff required by him to effectively discharge his duties.

SECTION 7. IC 7.1-3-1-3.5 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2003]: Sec. 3.5. A permittee to whom a retailer or dealer permit has been issued under this title, may

C  
o  
p  
y



deposit that permit with the commission for a period of one (1) year if the permittee is unable to immediately operate the business to which the permit applies. The commission may extend the term of the deposit for ~~an~~ **not more than four (4)** additional one (1) year ~~period~~ **periods** if the permittee is able to show to the satisfaction of the commission that the permittee is making a good faith effort to put the permit into operation.

SECTION 8. IC 7.1-3-6-3 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2003]: Sec. 3. ~~Reasons for Permit.~~ The commission may issue a temporary beer permit only to:

(~~a~~) **(1)** enable a fair, athletic event, barbecue, picnic, **wedding reception**, convention, exhibition, spectacle or contest to be publicly held and carried on; or

(~~b~~) ~~Accomodate~~ **(2)** accommodate the institutional activities of an association, society, charitable or benevolent organization, or a branch of one (1) of these, or both.

SECTION 9. IC 7.1-3-17.5-5 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2003]: Sec. 5. The commission may adopt rules under IC 4-22-2 concerning the following for an excursion permit and an adjacent landsite permit:

(1) Issuance.

(2) Scope.

(3) Permit fee.

(4) Expiration.

(5) Revocation and suspension.

**(6) Exceptions to IC 7.1-5-5-7(a) allowing discrimination between purchasers in the granting of prices, discounts, allowances, or service charges in the sale of alcoholic beverages.**

SECTION 10. IC 7.1-3-18.5 IS ADDED TO THE INDIANA CODE AS A NEW CHAPTER TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2003]:

#### **Chapter 18.5. Tobacco Sales Certificate**

**Sec. 1. (a) A person may not sell or distribute a tobacco product at retail without a valid tobacco sales certificate issued by the commission.**

**(b) A certificate may be issued only to a person who owns or operates at least one (1) of the following:**

**(1) A premises consisting of a permanent building or structure where the tobacco product is sold or distributed.**

**(2) A cigarette vending machine (as defined by IC 35-43-4-7).**

**Sec. 2. (a) A person who desires a certificate must provide the**



C  
o  
p  
y

following to the commission:

(1) The applicant's name and mailing address and the address of the premises for which the permit is being issued.

(2) A fee of fifty dollars (\$50).

(b) A separate certificate is required for each location where the tobacco products are sold or distributed.

(c) The fees collected under this section shall be deposited in the enforcement and administration fund under IC 7.1-4-10.

Sec. 3. (a) A certificate issued by the commission under this chapter must contain the following information:

(1) The certificate number.

(2) The permit holder's name.

(3) The permanent location of the business or vending machine for which the certificate is issued.

(4) The expiration date of the certificate.

(b) A certificate is:

(1) valid for one (1) year after the date of issuance, unless the commission suspends the certificate; and

(2) nontransferable.

Sec. 4. The commission shall adopt rules under IC 4-22-2 to establish procedures for the issuance, renewal, and reinstatement of a certificate.

Sec. 5. (a) Subject to subsection (b), the commission may suspend the certificate of a person who fails to pay a civil penalty imposed for violating IC 35-46-1-10, IC 35-46-1-10.2, IC 35-46-1-11.5, or IC 35-46-1-11.7.

(b) Before imposing a civil penalty or suspending a certificate under this chapter, the commission shall provide written notice of the alleged violation to the certificate holder and conduct a hearing. The commission shall provide written notice of the civil penalty or suspension to the certificate holder.

Sec. 6. (a) If a certificate has:

(1) expired; or

(2) been suspended;

the commission may not reinstate or renew the certificate until all civil penalties imposed against the certificate holder for violating IC 35-46-1-10, IC 35-46-1-10.2, IC 35-46-1-11.5, or IC 35-46-1-11.7 have been paid.

(b) The failure to pay a civil penalty described in subsection (a) is a Class B infraction.

Sec. 7. A person who is required to have a certificate under this chapter and who sells or distributes tobacco products without a

C  
O  
P  
Y



1 **valid certificate commits a Class A infraction. Each violation of**  
 2 **this section constitutes a separate offense.**

3 SECTION 11. IC 7.1-3-23-16 IS AMENDED TO READ AS  
 4 FOLLOWS [EFFECTIVE JULY 1, 2003]: Sec. 16. ~~Revocation upon~~  
 5 ~~Conviction~~. The commission may revoke a wholesaler's, retailer's, or  
 6 dealer's permit of any type after final judgment of conviction for an  
 7 offense defined in this title. The commission ~~shall~~ **may** revoke the  
 8 permit of a wholesaler, retailer, or dealer upon a second violation of a  
 9 provision of this title whether a judgment of conviction ensues or not.

10 SECTION 12. IC 7.1-4-4.1-2, AS ADDED BY P.L.204-2001,  
 11 SECTION 43, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE  
 12 JULY 1, 2003]: Sec. 2. The fee for a supplemental caterer's permit is  
 13 **five one hundred fifty dollars (\$5) (\$150) per event: year.**

14 SECTION 13. IC 7.1-4-4.1-3, AS ADDED BY P.L.204-2001,  
 15 SECTION 43, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE  
 16 JULY 1, 2003]: Sec. 3. The following biennial license fee is imposed  
 17 for an employee's permit:

18 (1) Five dollars (\$5) if the permit is used only to perform  
 19 volunteer service that benefits a nonprofit organization.

20 (2) ~~Twenty~~ **Thirty** dollars (~~\$20~~) (**\$30**) if subdivision (1) does not  
 21 apply.

22 The term of a biennial employee's license is two (2) years.

23 SECTION 14. IC 7.1-4-4.1-18 IS ADDED TO THE INDIANA  
 24 CODE AS A **NEW** SECTION TO READ AS FOLLOWS  
 25 [EFFECTIVE JULY 1, 2003]: **Sec. 18. The fee for a duplicate or**  
 26 **reissued permit of any type is ten dollars (\$10). The fees collected**  
 27 **under this section shall be deposited in the enforcement and**  
 28 **administration fund under IC 7.1-4-10.**

29 SECTION 15. IC 7.1-5-5-7, AS AMENDED BY P.L.204-2001,  
 30 SECTION 51, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE  
 31 JULY 1, 2003]: Sec. 7. (a) **Except as authorized by an exception in**  
 32 **rules adopted under IC 7.1-3-17.5-5(6),** it is unlawful for a permittee  
 33 in a sale or contract to sell alcoholic beverages to discriminate between  
 34 purchasers by granting a price, discount, allowance, or service charge  
 35 which is not available to all purchasers at the same time. However, this  
 36 section does not authorize or require a permittee to sell to a person to  
 37 whom he is not authorized to sell under this title.

38 (b) A premises that operates at least two (2) restaurants that are  
 39 separate and distinct from each other on the same premises may  
 40 provide for a different schedule of prices in each restaurant if each  
 41 restaurant conforms to all other laws and rules of the commission  
 42 regarding pricing and price discrimination in its separate and distinct



C  
o  
p  
y

1 areas.

2 SECTION 16. IC 35-46-1-10.2, AS AMENDED BY P.L.1-2001,  
3 SECTION 38, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE  
4 JULY 1, 2003]: Sec. 10.2. (a) A retail establishment that sells or  
5 distributes tobacco to a person less than eighteen (18) years of age  
6 commits a Class C infraction. For a sale to take place under this  
7 section, the buyer must pay the retail establishment for the tobacco  
8 product. Notwithstanding IC 34-28-5-4(c), a civil judgment for an  
9 infraction committed under this section must be imposed as follows:

10 (1) If the retail establishment at that specific business location has  
11 not been issued a citation or summons for a violation of this  
12 section in the previous ninety (90) days, a civil penalty of fifty  
13 dollars (\$50).

14 (2) If the retail establishment at that specific business location has  
15 had one (1) citation or summons issued for a violation of this  
16 section in the previous ninety (90) days, a civil penalty of one  
17 hundred dollars (\$100).

18 (3) If the retail establishment at that specific business location has  
19 had two (2) citations or summonses issued for a violation of this  
20 section in the previous ninety (90) days, a civil penalty of two  
21 hundred fifty dollars (\$250).

22 (4) If the retail establishment at that specific business location has  
23 had three (3) or more citations or summonses issued for a  
24 violation of this section in the previous ninety (90) days, a civil  
25 penalty of five hundred dollars (\$500).

26 A retail establishment may not be issued a citation or summons for a  
27 violation of this section more than once every twenty-four (24) hours  
28 for each specific business location.

29 (b) It is not a defense that the person to whom the tobacco was sold  
30 or distributed did not smoke, chew, or otherwise consume the tobacco.

31 (c) The following defenses are available to a retail establishment  
32 accused of selling or distributing tobacco to a person who is less than  
33 eighteen (18) years of age:

34 (1) The buyer or recipient produced a driver's license bearing the  
35 purchaser's or recipient's photograph showing that the purchaser  
36 or recipient was of legal age to make the purchase.

37 (2) The buyer or recipient produced a photographic identification  
38 card issued under IC 9-24-16-1 or a similar card issued under the  
39 laws of another state or the federal government showing that the  
40 purchaser or recipient was of legal age to make the purchase.

41 (3) The appearance of the purchaser or recipient was such that an  
42 ordinary prudent person would believe that the purchaser or

C  
o  
p  
y



recipient was not less than the age that complies with regulations promulgated by the federal Food and Drug Administration.

(d) It is a defense that the accused retail establishment sold or delivered the tobacco to a person who acted in the ordinary course of employment or a business concerning tobacco:

- (1) agriculture;
- (2) processing;
- (3) transporting;
- (4) wholesaling; or
- (5) retailing.

(e) As used in this section, "distribute" means to give tobacco to another person as a means of promoting, advertising, or marketing the tobacco to the general public.

(f) Unless a person buys or receives tobacco under the direction of a law enforcement officer as part of an enforcement action, a retail establishment that sells or distributes tobacco is not liable for a violation of this section unless the person less than eighteen (18) years of age who bought or received the tobacco is issued a citation or summons under section 10.5 of this chapter.

(g) Notwithstanding IC 34-28-5-5(c), civil penalties collected under this section must be deposited in the youth tobacco education and enforcement fund (IC 7.1-6-2-6).

**(h) A person who violates subsection (a) at least six (6) times in any six (6) month period commits habitual illegal sale of tobacco, a Class B infraction.**

SECTION 17. IC 7.1-3-23-15 IS REPEALED [EFFECTIVE UPON PASSAGE].

SECTION 18. IC 35-46-1-11.3 IS REPEALED [EFFECTIVE JULY 1, 2003].

SECTION 19. **An emergency is declared for this act.**

C  
o  
p  
y





## COMMITTEE REPORT

Mr. Speaker: Your Committee on Public Policy, Ethics and Veterans Affairs, to which was referred House Bill 1738, has had the same under consideration and begs leave to report the same back to the House with the recommendation that said bill be amended as follows:

Page 2, delete lines 3 through 8, begin a new paragraph and insert:

"SECTION 3. IC 7.1-1-3-8.5 IS ADDED TO THE INDIANA CODE AS A **NEW** SECTION TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2003]: **Sec. 8.5. "Certificate" means a tobacco sales certificate for purposes of IC 7.1-3-18.5.**"

Page 2, delete lines 30 through 42.

Delete page 3.

Page 4, delete lines 1 through 29, begin a new paragraph and insert:

"SECTION 7. IC 7.1-3-6-3 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2003]: **Sec. 3. Reasons for Permit:** The commission may issue a temporary beer permit only to:

(a) **(1)** Enable a fair, athletic event, barbecue, picnic, **wedding reception**, convention, exhibition, spectacle or contest to be publicly held and carried on; or

(b) ~~Accomodate~~ **(2) Accommodate** the institutional activities of an association, society, charitable or benevolent organization, or a branch of one (1) of these, or both."

Page 4, line 33, delete "Permit" and insert "**Certificate**".

Page 4, line 35, delete "permit" and insert "**certificate**".

Page 4, line 37, delete "tobacco sales permit" and insert "**certificate**".

Page 4, line 39, delete "The" and insert "A".

Page 4, line 39, after "premises" insert "**consisting of a permanent building or structure,**".

Page 4, line 42, delete "tobacco sales permit" and insert "**certificate**".

Page 5, line 4, delete "one hundred" and insert "**fifty**".

Page 5, line 4, delete "(\$100)" and insert "**(\$50)**".

Page 5, line 5, delete "permit" and insert "**certificate**".

Page 5, between lines 6 and 7, begin a new paragraph and insert:

"(c) **The fees collected under this section shall be deposited in the enforcement and administration fund under IC 7.1-4-10.**"

Page 5, line 7, delete "tobacco sales permit" and insert "**certificate**".

Page 5, line 9, delete "permit" and insert "**certificate**".

Page 5, line 10, delete "address." insert "**name.**".

Page 5, line 11, after "The" insert "**permanent**".

C  
o  
p  
y



Page 5, line 12, delete "permit" and insert "**certificate**".

Page 5, line 13, delete "permit" and insert "**certificate**".

Page 5, line 14, delete "tobacco sales permit" and insert "**certificate**".

Page 5, line 16, delete "permit" and insert "**certificate**".

Page 5, line 20, delete "tobacco sales permit" and insert "**certificate**".

Page 5, line 22, delete "permit" and insert "**certificate**".

Page 5, line 22, delete "violates this title," and insert "**fails to pay a civil penalty imposed for violating**".

Page 5, line 24, after "Before" insert "**imposing a civil penalty,**".

Page 5, line 24, after "suspending" insert ",".

Page 5, line 24, delete "permit" and insert "**certificate**".

Page 5, line 26, delete "permit" and insert "**certificate**".

Page 5, line 27, after "the" insert "**civil penalty,**".

Page 5, line 27, after "suspension" insert ",".

Page 5, line 28, delete "permit" and insert "**certificate**".

Page 5, delete lines 29 through 40, begin a new paragraph and insert:

**"Sec. 6. If a certificate has:**

**(1) expired;**

**(2) been suspended; or**

**(3) been revoked;**

**the commission may not reinstate or renew the certificate until all civil penalties imposed against the certificate holder for violating IC 35-46-1-10, IC 35-46-1-10.2, IC 35-46-1-11.5, or IC 35-46-1-11.7 have been paid."**

Page 5, line 41, delete "8." and insert "7."

Page 5, line 41, delete "tobacco sales permit" and insert "**certificate**".

Page 6, line 1, delete "tobacco sales permit" and insert "**certificate**".

Page 6, between lines 3 and 4, begin a new paragraph and insert:

"SECTION 9. IC 7.1-3-23-16 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2003]: Sec. 16. ~~Revocation upon Conviction.~~ The commission may revoke a wholesaler's, retailer's, or dealer's permit of any type after final judgment of conviction for an offense defined in this title. The commission ~~shall~~ **may** revoke the permit of a wholesaler, retailer, or dealer upon a second violation of a provision of this title whether a judgment of conviction ensues or not."

Page 6, line 7, after "five" insert "**one hundred**".

Page 6, line 7, delete "(\$50)" and insert "**(\$150)**".

Page 6, line 7, delete "day" and insert "**year**".



C  
o  
p  
y

Page 6, line 20 after "(\$10)." insert "**The fees collected under this section shall be deposited in the enforcement and administration fund under IC 7.1-4-10.**".

Page 6, line 28, rest in roman "For a sale to take place under this".

Page 6, reset in roman lines 29 through 42.

Page 7, reset in roman lines 1 through 11.

Page 7, line 12, reset in roman "(e)".

Page 7, line 12, delete "(b)".

Page 7, line 21, delete "(c)" and insert "**(f)**".

Page 7, line 28, reset in roman "For a sale to take place under this".

Page 7, reset in roman lines 29 through 42.

Page 8, reset in roman lines 1 through 32.

Page 8, line 33, reset in roman "(e)".

Page 8, line 33, delete "(b)".

Page 8, line 42, delete "(c)" and insert "**(f)**".

Page 9, delete lines 3 through 42.

Delete page 10.

Page 11, delete lines 1 through 11.

Renumber all SECTIONS consecutively.

and when so amended that said bill do pass.

(Reference is to HB 1738 as introduced.)

LYTLE, Chair

Committee Vote: yeas 11, nays 3.

C  
o  
p  
y



HOUSE MOTION

Mr. Speaker: I move that House Bill 1738 be amended to read as follows:

Page 7, between lines 16 and 17, begin a new paragraph and insert: "SECTION 15. IC 7.1-3-23-15 IS REPEALED [EFFECTIVE UPON PASSAGE].".

Page 7, after line 18, begin a new paragraph and insert: "SECTION 16. **An emergency is declared for this act.**".

Renumber all SECTIONS consecutively.

(Reference is to HB 1738 as printed February 26, 2003.)

KUZMAN

---

HOUSE MOTION

Mr. Speaker: I move that House Bill 1738 be amended to read as follows:

Page 2, line 24, delete "two (2)" and insert "**four (4)**".

(Reference is to HB 1738 as printed February 26, 2003.)

KUZMAN

---

HOUSE MOTION

Mr. Speaker: I move that House Bill 1738 be amended to read as follows:

Page 2, between lines 17 and 18, begin a new paragraph and insert: "SECTION 6. IC 7.1-2-2-5 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2003]: Sec. 5. Prosecutor: Powers and Duties. The prosecutor shall have the following powers and duties:

(a) To prosecute before the commission all violations of laws pertaining to alcohol, ~~and~~ alcoholic beverages, **and tobacco, including violations pertaining to tobacco vending machines;**

(b) To prosecute before the commission all violations of the rules and regulations of the commission;

(c) To assist the prosecuting attorneys of the various judicial circuits in the investigation and prosecution of violations of laws pertaining to alcohol, ~~and~~ alcoholic beverages, **and tobacco, including violations pertaining to tobacco vending machines,** and to represent the state in

EH 1738—LS 7636/DI 87+



C  
o  
p  
y

these matters;

(d) To appear before grand juries to assist in their investigations into matters pertaining to alcohol, ~~and~~ alcoholic beverages, **and tobacco, including matters pertaining to tobacco vending machines;**

(e) To establish a seal of his office;

(f) To administer oaths and to do all other acts authorized by law for notaries public; and,

(g) To employ, with the consent of the commission and at salaries fixed by the commission in their budget, the clerical staff required by him to effectively discharge his duties."

Page 3, line 25, delete "revokes" and insert "**suspends**".

Page 3, line 31, delete "or revoke".

Page 3, line 34, delete "penalty, suspending, or revoking" and insert "**penalty or suspending**".

Page 3, line 38, delete "penalty, suspension, or revocation" and insert "**penalty or suspension**".

Page 3, line 39, after "Sec. 6." insert "**(a)**".

Page 3, line 40, after "expired;" insert "**or**".

Page 3, line 41, delete "or".

Page 3, delete line 42.

Page 4, between lines 4 and 5, begin a new paragraph and insert:

**"(b) The failure to pay a civil penalty described in subsection (a) is a Class B infraction."**

Page 4, line 7, delete "Class B misdemeanor." and insert "**Class A infraction.**".

Page 5, reset in roman lines 29 through 34.

Page 5, line 35, reset in roman "(g)".

Page 5, line 35, delete "(f)".

Page 7, between lines 16 and 17, begin a new paragraph and insert:

**"(h) A person who violates subsection (a) at least six (6) times in any six (6) month period commits habitual illegal sale of tobacco, a Class B infraction."**

Page 7, reset in roman lines 8 through 13.

Page 7, line 14, reset in roman "(g)".

Page 7, line 14, delete "(f)".

Renumber all SECTIONS consecutively.

(Reference is to HB 1738 as printed February 26, 2003.)

LYTLE

C  
o  
p  
y



## COMMITTEE REPORT

Mr. President: The Senate Committee on Commerce and Consumer Affairs, to which was referred House Bill No. 1738, has had the same under consideration and begs leave to report the same back to the Senate with the recommendation that said bill be AMENDED as follows:

Page 1, line 4, after "peace" insert ",".

Page 3, line 11, delete "Enable" and insert "enable".

Page 3, line 14, after "(2)" delete "Accommodate" and insert "accommodate".

Page 3, between lines 16 and 17, begin a new paragraph and insert:  
"SECTION 9. IC 7.1-3-17.5-5 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2003]: Sec. 5. The commission may adopt rules under IC 4-22-2 concerning the following for an excursion permit and an adjacent landsite permit:

(1) Issuance.

(2) Scope.

(3) Permit fee.

(4) Expiration.

(5) Revocation and suspension.

**(6) Exceptions to IC 7.1-5-5-7(a) allowing discrimination between purchasers in the granting of prices, discounts, allowances, or service charges in the sale of alcoholic beverages."**

Page 3, line 24, delete "only".

Page 3, line 24, after "issued" insert "**only**".

Page 3, line 27, delete "structure," and insert "**structure**".

Page 3, line 31, delete "address," and insert "**address**".

Page 4, line 15, after "provide" delete "the".

Page 5, between lines 15 and 16, begin a new paragraph and insert:  
"SECTION 15. IC 7.1-5-5-7, AS AMENDED BY P.L.204-2001, SECTION 51, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2003]: Sec. 7. (a) **Except as authorized by an exception in rules adopted under IC 7.1-3-17.5-5(6)**, it is unlawful for a permittee in a sale or contract to sell alcoholic beverages to discriminate between purchasers by granting a price, discount, allowance, or service charge which is not available to all purchasers at the same time. However, this section does not authorize or require a permittee to sell to a person to whom he is not authorized to sell under this title.

(b) A premises that operates at least two (2) restaurants that are separate and distinct from each other on the same premises may provide for a different schedule of prices in each restaurant if each

EH 1738—LS 7636/DI 87+



C  
o  
p  
y

restaurant conforms to all other laws and rules of the commission regarding pricing and price discrimination in its separate and distinct areas."

Page 5, delete lines 16 through 42.

Page 6, delete lines 1 through 18.

Renumber all SECTIONS consecutively.

and when so amended that said bill do pass.

(Reference is to HB 1738 as reprinted March 4, 2003.)

SERVER, Chairperson

Committee Vote: Yeas 6, Nays 0.

C  
o  
p  
y

